

### Remarks

In response to the Office action dated October 19, 2006, applicants respond as follows.

The only issue raised in the Office action is the assertion that "[t]he replies filed on 12/27/05, 4/17/06, and 8/1/06 are not fully responsive to the prior Office action (9/21/05) because of the following omission(s) or matter(s): None of the replies addresses the objection to the specification for the improper incorporation by reference. See 37 C.F.R. 1.111."

According to applicants' understanding, the examiner's assertion is incorrect. As stated in M.P.E.P. §201.13(g), "an applicant may incorporate by reference the foreign priority application by including, in the U.S. application-as-filed, an explicit statement that such specifically enumerated foreign patent application or applications are 'hereby incorporated by reference.' This statement must appear in the specification. See 37 C.F.R. 1.57(b) and M.P.E.P. §608.01(p). For U.S. applications filed prior to September 21, 2004, the incorporation by reference statement may appear in the transmittal letter or in the specification. The inclusion of this statement of incorporation by reference of the foreign priority application will permit an applicant to amend the U.S. application to include subject matter from the priority application(s) without raising the issue of new matter. Thus, the incorporation by reference statement can be relied upon to permit the entering of a portion of the foreign priority application into the U.S. application when a portion of the foreign priority application has been inadvertently omitted from the U.S. application, or to permit the correction of translation error in the U.S. application where the foreign priority application is in a non-English language."

In the instant application, the application-as-filed includes a specific statement incorporating the priority application by reference. It is noted that the instant application was filed December 11, 2003, which is before the September 21, 2004 date on which specific requirements of incorporation by reference practice were changed.

Accordingly, applicants submit that the incorporation by reference of the foreign priority application in the instant application is in compliance with all PTO rules. If the examiner


disagrees, however, he is invited to contact applicants' representative by telephone to resolve this issue.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

One World Trade Center, Suite 1600  
121 S.W. Salmon Street  
Portland, Oregon 97204  
Telephone: (503) 595-5300  
Facsimile: (503) 595-5301

By

  
\_\_\_\_\_  
Michael P. Girard  
Registration No. 38,467